

COMMONWEALTH OF MASSACHUSETTS

At the Supreme Judicial Court holden at Boston within and for said Commonwealth on  
the twenty-eighth day of November, in the year two thousand and seven:  
present,

|                           |   |          |
|---------------------------|---|----------|
| HON. MARGARET H. MARSHALL | ) |          |
|                           | ) |          |
| HON. JOHN M. GREANEY      | ) |          |
|                           | ) |          |
| HON. RODERICK L. IRELAND  | ) |          |
|                           | ) |          |
| HON. FRANCIS X. SPINA     | ) | Justices |
|                           | ) |          |
| HON. JUDITH A. COWIN      | ) |          |
|                           | ) |          |
| HON. ROBERT J. CORDY      | ) |          |
|                           | ) |          |
| HON. MARGOT BOTSFORD      | ) |          |

ORDERED: That the Massachusetts Rules of Civil Procedure adopted by order dated  
July 13, 1973, as amended, to take effect on July 1, 1974, are hereby amended as follows:

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|----------|---|
| Rule 1:  | By striking out the sixth definition (definition of<br>Boston Municipal Court) and inserting in lieu<br>thereof the new sixth definition attached hereto; |
| Rule 1A: | By repealing the Transitional Rule for "District<br>Court Litigation in Progress on July 1, 1996."  |
| Rule 12: | By striking out Rule 12(b)(9) and inserting in lieu<br>thereof Rules 12(b)(9) and 12(b) (10) attached<br>hereto;  |

Rule 12: By striking out Rule 12(h)(1) and inserting in lieu thereof the amended Rule 12(h)(1) attached hereto;

Rule 13: By striking out Rule 13(j);

Rule 38: By striking out Rule 38(e);

Rule 39: By inserting after the first sentence of Rule 39(a) the new sentence attached hereto;

Rule 39: By striking out Rule 39(d);

Rule 42: By striking out Rule 42(d) and inserting in lieu thereof the amended Rule 42(d) attached hereto;

Rule 47: By striking out the heading of Rule 47(b) and inserting in lieu thereof the following heading:  
(b) Courts Other Than District Courts: Additional Jurors.

Rule 47: By inserting the new Rule 47(c) attached hereto;

Rule 48: By striking out Rule 48 and inserting in lieu thereof the new Rule 48 attached hereto;

Rule 52: By striking out Rule 52(c) and inserting in lieu thereof the amended Rule 52(c) attached hereto;

Rule 55: By striking out the heading of Rule 55(b)(1) and inserting in lieu thereof the following heading: By the Clerk.

Rule 55: By striking out the heading of Rule 55(b)(2) and

inserting in lieu thereof the following heading: By  
the Court.

Rule 55: By striking out subparagraphs (3) and (4) of Rule  
55(b);

Rule 55: By striking out subparagraphs (5) and (6) of Rule  
55(b) and inserting in lieu thereof the renumbered  
and amended subparagraphs (3) and (4) attached  
hereto;

Rule 64A: By repealing Rule 64A, "Requests For Rulings Of  
Law in District Court."

Rule 80: By striking out Rule 80(c) and inserting in lieu  
thereof the amended Rule 80(c) attached hereto;

Rule 81: By striking out item 10 in Rule 81(a)(1) and  
inserting in lieu thereof the amended item 10  
attached hereto.

These amendments are applicable to actions commenced on or after March 1, 2008, and, with respect to pending actions commenced on or after August 31, 2004, the amendments are applicable to procedural steps occurring on or after March 1, 2008.

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| <u>MARGARET H. MARSHALL</u> | ) |          |
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| <u>JOHN M. GREANEY</u>      | ) |          |
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| <u>FRANCIS X. SPINA</u>     | ) | Justices |
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| <u>JUDITH A. COWIN</u>      | ) |          |
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| <u>ROBERT J. CORDY</u>      | ) |          |
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|                             | ) |          |
| <u>MARGOT BOTSFORD</u>      | ) |          |

Rule 1

[Sixth definition]

"Municipal Court of the City of Boston" or "Boston Municipal Court" shall mean a division of the Boston Municipal Court Department of the Trial Court, or a session thereof for holding court.

Rules 12(b)(9) and (10)

(9) Pendency of a prior action in a court of the Commonwealth;

(10) Improper amount of damages in the Superior Court as set forth in G. L. c. 212, § 3  
or in the District Court as set forth in G. L. c. 218, § 19.

## Rule 12(h)(1)

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, misnomer of a party, pendency of a prior action, or improper amount of damages is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

Rule 39(a)

[Second sentence]

In the District Court, the action shall be designated upon the docket as a jury action in accordance with the statutory provisions governing trials by jury in the District Court.



## Rule 42(d)

(d) District Court: Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the constitution of this Commonwealth or as set forth in a statute.

### Rule 47(c)

(c) District Court: Additional Jurors. The court may order impanelled a jury of not more than eight members and the court shall have jurisdiction to try the case with such jury as provided by law. Each side is entitled to 1 peremptory challenge in addition to those otherwise allowed by law if 1 or 2 additional jurors are to be impanelled.

#### Rule 48. Number of Jurors - Majority Verdict

The parties may stipulate that the jury shall consist of any number less than twelve, or less than six in the District Court, or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

## Rule 52(c)

(c) District Court: Effect. In all actions tried upon the facts without a jury, except as otherwise provided in Rule 65.3, the court shall find the facts specially and state separately its conclusions of law thereon, provided that any party submits before the beginning of any closing arguments proposed findings of fact and rulings of law. Upon request made before the beginning of any closing arguments, such party shall have the right to submit supplemental proposed findings of fact and rulings of law within three days. Each proposed finding of fact and ruling of law should be set forth concisely in a separately numbered paragraph covering one subject. Judgment shall be entered pursuant to Rule 58. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)(2).

Rules 55(b), subparagraphs (3) and (4)

(3) The provisions of subparagraph (b)(2) supplement, but do not supersede, any other requirements of notice established by law.

(4) Affidavit Required. Notwithstanding the foregoing, no judgment by default shall be entered until the filing of an affidavit made by any competent person, on the affiant's own knowledge, setting forth facts showing that the defendant is not a person in military service as defined in the "Servicemembers Civil Relief Act," as set forth in 50 U.S.C. App. §§ 501 et seq., except upon order of the court in accordance with the Act.

## Rule 80(c)

(c) District Court: Stenographers. The appointment of stenographers in District Court proceedings shall be in accordance with the applicable statute. Whenever the testimony of a witness at a trial or hearing which was officially stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony. Subject to the discretion of the court, parties may be permitted to record stenographically the proceedings in civil actions at their own expense.

Rule 81(a)(1)

[item 10]

10. proceedings to foreclose any mortgage on real estate brought in compliance with the "Servicemembers Civil Relief Act," as set forth in 50 U.S.C. App. §§ 501 et seq.